

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, January 26, 2022

Hearing Room 302

9:30 AM

1:00-00000

Chapter

#0.00 This calendar will be conducted remotely, using ZoomGov video and audio.

Parties in interest and members of the public may connect to the video and audio feeds, free of charge, using the connection information provided below.

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Video/audio web address: <https://cacb.zoomgov.com/j/1609338471>

Meeting ID: 160 933 8471

Password: 966513

Dial by your location: 1 -669-254-5252 OR 1-646-828-7666

Meeting ID: 160 933 8471

Password: 966513

Docket 0

Tentative Ruling:

- NONE LISTED -

**United States Bankruptcy Court
Central District of California
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Wednesday, January 26, 2022

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10:00 AM

1:19-12984 Philip Valerio Tanglao and Maria Ana Bautro Tanglao

Chapter 13

#1.00 Motion for relief from stay

NISSAN MOTOR ACCEPTANCE CORP.

Docket 46

Tentative Ruling:

Movant: Nissan Motor Acceptance Corp.

Petition Date: 11/27/2019

Confirmation Date: 4/16/2020

Service: Proper. Opposition Filed.

Property: 2017 Nissan Rogue 2WD (VIN # KNMAT2MT3HP608139)

Property Value: \$ 20,000 (per Debtor's Schedules)

Amount Owed: \$ 15,715.44

Equity Cushion: 21.42%

Equity: \$4,284.56

Postpetition Delinquency: \$2,169.30 (1 payment of \$14.95, 2 payments of \$35.27, 1 payment of \$20.40 and 14 payments of \$37.11).

Movant seeks relief under 11 U.S.C. 362(d)(1) GRANT in paragraph 2 (proceed under applicable non-bankruptcy law) 5 (Codebtor stay) and 6 (waiver of 4001(a)(3) stay). Movant alleges cause exists because the Property's depreciating value, Debtor has failed to provide proof of insurance and the Debtor has missed postpetition payments.

Debtor opposes the motion on grounds that the motion does not account for all payments that were made and that Debtor is now current on all payments.

The exhibits attached to Debtor's opposition suggest that the Debtor has made some postpetition payments. The opposition does not discuss not providing a proof of insurance.

Is the Debtor no current on payments? Has Debtor provided the Movant with proof of insurance?

Appearance Required

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CONT... Philip Valerio Tanglao and Maria Ana Bautro Tanglao

Chapter 13

Party Information

Debtor(s):

Philip Valerio Tanglao

Represented By
Hasmik Jasmine Papian

Joint Debtor(s):

Maria Ana Bautro Tanglao

Represented By
Hasmik Jasmine Papian

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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10:00 AM

1:21-11367 Frederick Franz Burroughs

Chapter 13

#2.00 Motion for relief from stay

U.S. BANK NATIONAL ASSOCIATION

Docket 27

Tentative Ruling:

Movant: US Bank National Association
Petition Date: 08/11/2021
Ch. 13 Plan Not Confirmed
Service: Proper. Opposition filed.
Property: 7312 Ruffner Avenue, Van Nuys, CA 91406
Property Value: \$662,100 (per debtor's schedules)
Amount Owed: \$482,056.90
Equity Cushion: 27.19%
Equity: \$180,043.10
Post-Petition Delinquency: \$7,739.04 (3 Payments of \$2,579.68)

Movant seeks relief under 11 U.S.C. 362(d)(1) specific relief requested in paragraphs 2 (proceed under non-bankruptcy law); 3 (option to enter forbearance agreement, loan modification, refinance agreement) , 7 (waiver of the 4001(a)(3) stay). Movant alleges that its interest in the Property are not being adequately protected since Debtor has been missing post-petition payments.

Debtor opposes relief from the stay because the Debtor is in the process of selling the Property and the Movant will be paid in full from the proceeds.

The Debtor has filed a motion to sell the Property. There is a significant equity cushion.

The Court will continue this hearing to February 23, 2022 at 9:30am to allow the Debtor's motion to sell the Property to be adjudicated.

Appearance Required.

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CONT... Frederick Franz Burroughs

Chapter 13

Party Information

Debtor(s):

Frederick Franz Burroughs

Represented By
Onyinye N Anyama

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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10:00 AM

1:21-11545 Melissa D Kurtz

Chapter 13

#3.00 Motion for relief from stay

MOUNTAIN GLEN II CONDOMINIUM HOA, et al

Docket 44

Tentative Ruling:

Movant: Mountain Glan II Condominium HOA
Petition Date: 09/20/2021
Ch. 13 Plan Not Confirmed
Service: Proper. No Opposition filed.
Property: 13105 Portola Way Sylmar, CA 91342
Property Value: \$688,000 (per debtor's schedules)
Amount Owed: \$541,510.78 (Movant's Claim \$40,305.93)
Equity Cushion: 21.29%
Equity: \$146,489.22
Post-Petition Delinquency: \$3,176.72

Movant seeks relief under 11 U.S.C. 362(d)(1) specific relief requested in paragraphs 2 (proceed under non-bankruptcy law); 3 (option to enter forbearance agreement, loan modification, refinance agreement) , 7 (waiver of the 4001(a)(3) stay) and relief under 11 U.S.C. 362(d)(4) specific relief under paragraph (8) (if recorded then binding on any case affecting Property for two years). Movant alleges that cause exists for lifting the stay because this case was filed in bad faith and is a part of a scheme to hinder or delay the creditors.

On 12/12/2017, Debtor filed a Chapter 13 Petition in Bankruptcy with this Court as Case No. 1:17-bk-13304-MT. Movant had prepared a motion for relief in this case since the Debtor failed to make any post-petition assessment payments. The case was dismissed on December 4, 2018 for failure to make plan payments before the Motion was filed.

On 04/08/2019, Debtor filed another Chapter 13 Petition in Bankruptcy with this Court as Case No. 1:19-bk-10836-MT. Movant filed its Motion for Relief

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CONT... Melissa D Kurtz

Chapter 13

from the Automatic Stay on 05/05/2020. The parties resolved the motion through an Adequate Protection Order on 05/29/2020. Debtor made most of the payments to Movant on the order and the case was dismissed on February 3, 2021. She thereafter made three payments and then stopped paying. These have been the only payments made since 2014.

Debtor filed this third case on September 20, 2021. Once again, she has made no payments to Movant since filing. It is likely she intends to rely on another adequate protection order to cure this default.

While there are multiple bankruptcies, the previous cases suggest that the Debtor has tried to reorganize. The Debtor has gone through to confirm a plans but were dismissed due to failure to make plan payments. It appears the Debtor has struggled with making payments to the Movant - even during the bankruptcy case - but it appears the Debtor made a good faith attempt to comply with an APO in her last bankruptcy case. There is equity in the Property but the failure to make payments over the years is troublesome. The Debtor needs to explain why here previous cases were dismissed for failure to make plan payments and why this case is different.

Appearance Required.

Party Information

Debtor(s):

Melissa D Kurtz

Represented By
Kevin T Simon

Movant(s):

Mountain Glen II Condominium

Represented By
Bonni S Mantovani

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:21-11879 Oweleo Lysette Titi

Chapter 7

#4.00 Motion for relief from stay (personal property)

EXETER FINANCIAL LLC
F/K/A EXETER FINANCIAL CORP

fr. 1/5/22(stip)

Docket 27

Tentative Ruling:

Petition Date: 11/17/2021

Chapter 7

Service: Proper. No Opposition filed.

Property: 2011 Mazda CX-7, VIN: JM3ER2C36B0354015

Property Value:\$5,000 (per Debtor's schedules)

Amount Owed: \$17,083.03

Equity Cushion: \$0

Post-Petition Delinquency: \$419.71

Movant alleges that its interest is not adequately protected due to there being no equity in the Property, Debtor did not provide proof of insurance, and missed payments justify lifting the stay.

Disposition: GRANT under 11 U.S.C. 362(d)(1). GRANT relief requested in paragraph 2 (proceed under applicable non-bankruptcy law) and 6 (waiver of 4001(a)(3) stay).

No Appearance Required. Movant to lodge an order within 7 days.

Party Information

Debtor(s):

Oweleo Lysette Titi

Represented By
Jason Boyer

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CONT... Oweleo Lysette Titi

Chapter 7

Trustee(s):

Nancy J Zamora (TR)

Pro Se

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1:18-11965 Ian Jacoby

Chapter 7

#5.00 Trustee's Final Report and Applications for
Compensation and Deadline to Object

Trustee:
Amy Goldman

Attorney for Trustee:
Levene, Neale, Bender, Yoo & Brill LLP

Docket 104

Tentative Ruling:

Service proper. No opposition filed. Having reviewed the Trustee's Final Report, the Court finds that the fees and costs are reasonable and are approved as requested.

APPEARANCES WAIVED ON 1-26-2022.

Party Information

Debtor(s):

Ian Jacoby

Represented By
Andrew Goodman
Vincent V Frounjian

Trustee(s):

Amy L Goldman (TR)

Represented By
Carmela Pagay
Juliet Y. Oh

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1:18-12919 Jeffrey Steinberg M.D., A Medical Corporation

Chapter 7

#6.00 Trustee's Final Report and Application for
Compensation and Deadline to Object

Trustee:
David K. Gottlieb

Attorney for Trustee:
Marshack Hays LLP

Accountant for Trustee:
Menchaca & Company LLP

Docket 63

Tentative Ruling:

Service proper. No opposition filed. Having reviewed the Trustee's Final Report, the Court finds that the fees and costs are reasonable and are approved as requested.

APPEARANCES WAIVED ON 1-26-2022.

Party Information

Debtor(s):

Jeffrey Steinberg M.D., A Medical

Represented By
David S Hagen

Trustee(s):

David Keith Gottlieb (TR)

Represented By
D Edward Hays
Laila Masud
Marshack Hays LLP

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1:19-10501 Capital Gold Group Inc.

Chapter 7

#7.00 Motion to Approve Settlement Between
Trustee and Jonathan Rose and Siniva
Walker

Docket 52

Tentative Ruling:

Service proper. No opposition filed. Having reviewed the motion to approve the settlement agreement, the Court finds that the settlement is fair, equitable and in the best interests of the estate. The motion to approve settlement is granted.

Movant to lodge an order with the Court within 7 days. No Appearance Required.

Party Information

Debtor(s):

Capital Gold Group Inc.

Represented By
Sevan Gorginian

Trustee(s):

Diane C Weil (TR)

Represented By
Kathy Bazoian Phelps

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1:20-11601 Andrea Ricci and Tonya Crooks

Chapter 13

#8.00 Motion for relief from stay

SANDRA HENSERLING

fr. 12/9/20, 12/16/20, 4/7/21; 9/1/2, 1/19/22

Docket 26

Tentative Ruling:

Tentative Ruling: The Court partially granted RFS so that discovery could proceed in the State Court and the Adversary Proceeding against Debtor Crooks. What is the status of discovery? Is further relief from stay required?

Apperance Required

Party Information

Debtor(s):

Andrea Ricci

Represented By
Robert M Aronson

Joint Debtor(s):

Tonya Crooks

Represented By
Robert M Aronson

Movant(s):

Sandra Hensarling

Represented By
Alberto J Campain

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:20-11601 Andrea Ricci and Tonya Crooks

Chapter 13

#9.00 Motion for relief from stay

BROWGAL, LLC

fr. 12/9/20, 12/16/20, 4/7/21; 9/1/21, 1/19/22

Docket 25

Tentative Ruling:

Tentative Ruling: The Court partially granted RFS so that discovery could proceed in the State Court and the Adversary Proceeding against Debtor. What is the status of this case?

Appearance required.

Party Information

Debtor(s):

Andrea Ricci

Represented By
Robert M Aronson

Joint Debtor(s):

Tonya Crooks

Represented By
Robert M Aronson

Movant(s):

Browgal, LLC

Represented By
Alberto J Campain

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:20-11601 Andrea Ricci and Tonya Crooks

Chapter 13

#10.00 Motion for relief from stay

ASHLEY HENSARLING

fr. 12/9/20, 12/16/20, 4/7/21; 9/1/21, 1/19/21

Docket 24

Tentative Ruling:

Tentative Ruling: The Court partially granted RFS so that discovery could proceed in the State Court and the Adversary Proceeding against Debtor. What is the status of this case?

Appearance required.

Party Information

Debtor(s):

Andrea Ricci

Represented By
Robert M Aronson

Joint Debtor(s):

Tonya Crooks

Represented By
Robert M Aronson

Movant(s):

Ashley Hensarling

Represented By
Alberto J Campain

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:21-10554 Elsa V. Ramirez

Chapter 7

#11.00 Motion to Avoid Lien JUDICIAL LIEN with
Upstream Capital Investments, LLC Pursuant
to 11 U.S.C. 522(f)

Docket 11

Tentative Ruling:

Debtor seeks to avoid a judgment lien held by Upstream Capital Investment ("Creditor"). The current lien amount is \$326,781 based on Debtor's moving papers. Debtor asserts that this judgment lien impairs their homestead exemption. There is currently an adversary proceeding between the parties to determine the nondishargeability of the underlying debt.

522(f) provides:

(1) [T]he debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is—

(A) a judicial lien, other than a judicial lien that secures a debt of a kind that is specified in section 523(a)(5)

Creditor opposes this motion on grounds that the debt maybe nondishargeable based on fraud but provides no authority or legal argument to support this position. A substantial number of courts considering this issue agree that a debtor's avoidance power is not conditioned upon whether the underlying debt is dischargeable unless the debt comes within the categories of nondishargeable debts Congress expressly excepted from the operation of § 522(c), none of which are relevant to the present matter. See *Walters v. United States Nat'l Bank of Johnstown*, 879 F.2d 95, 97 (3d Cir. 1989) (holding that a judicial lien impairing an exempted homestead interest which is securing a debt found to be nondishargeable under § 523(a)(2)(A) (fraud) may still be avoided under § 522(f)) ("Congress was well aware of the relationship between [§§ 522 and 523], and carefully excepted from the exemption section some, but not all, non-dischargeable debts."); *In re Liming*,

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797 F.2d 895, 898 (10th Cir. 1986) (nonpossessory, nonpurchase-money security interest avoided pursuant to §522(f)(2) notwithstanding that underlying debt was found to be nondischargeable under §523(a)(2)(B) (false financial statement)) ("[A] debtor may bring an action to avoid a lien under [§ 522(f)] even if the debt secured by that lien is declared nondischargeable.")

The basis for nondishargeability is fraud. This does not fall under the ambit of § 522(c) or § 523(a)(5). There is no basis for denying this motion because the underlying debt maybe nondischargeable. Having reviewed the moving papers, the judgment lien impairs the homestead exemption and therefore the lien is avoided. This does not affect the dischargability of the debt.

The motion is Granted.
Appearance Required.

Party Information

Debtor(s):

Elsa V. Ramirez

Represented By
Ahren A Tiller

Trustee(s):

Diane C Weil (TR)

Pro Se

**United States Bankruptcy Court
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1:21-11524 Jet Midwest Group, LLC

Chapter 7

#12.00 Motion For Order Approving Trustees Settlement Agreement With Top Jet Enterprises, Ltd And Jet Midwest International, Co., Ltd

fr. 1/12/22

Docket 67

Tentative Ruling:

Appearance Required. tentative ruling follows

On September 14, 2021, Jet Midwest Group, LLC ("Debtor") filed a voluntary petition under Chapter 7 of the Bankruptcy Code. Shortly thereafter, Amy Goldman ("Trustee") was appointed as the Chapter 7 Trustee. Prepetition, the Debtor was in the business of purchasing used aircraft, aircraft engines, and aircraft parts for reconditioning and re-sale. Because the Debtor did not have the facilities to perform reconditioning work, it consigned the aircraft, engines, and parts that it purchased to Jet Midwest, Inc. ("JM Inc."), a company located in Kansas City, Missouri with overlapping ownership.

The Debtor struggled financially since at least 2015 when it purportedly borrowed \$11,000,000.00 (the "Ohadi Loan") from the F. Paul Ohadi Trust Ltd. December 15, 1999 (the "Ohadi Trust") and borrowed \$6,500,000.00 (the "Term Loan") from Jet Midwest International, Co., Ltd. ("JM Int'l"). The scope of the security interest taken by the Ohadi Trust, its apparent acquisition of a 20% ownership interest in the Debtor, and the Debtor's relationship with F. Paul Ohadi ("Ohadi") are hotly disputed and feature heavily in the unraveling of the business relationship between the Debtor and JM Int'l. Adding to the dispute, Kenneth M. Woolley ("Mr. Woolley"), a wealthy businessman with pre-existing connections to the Debtor's principals (and the one who appears to have introduced Mr. Ohadi to the Debtor's principals) may have acquired a portion, 50%, of the Ohadi Trust's apparent 20% interest in the Debtor. On February 26, 2018, in the midst of the litigation described below, the Debtor filed a Chapter 11 case in Delaware, Case No. 18-bk-10395-KJC. The Delaware Bankruptcy Case was dismissed on June 1, 2018.

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The Debtor, JM Inc., their owners, certain affiliated companies, the Ohadi Trust, Mr. Woolley, and related parties, on the one hand, and JM Int'l and Top Jet Enterprises, Ltd. ("Top Jet"), on the other hand, have been involved in several pieces of complex litigation generally concerning (i) the defaulted Term Loan and (ii) a failed \$100 million joint venture between a subsidiary of the Debtor and Top Jet to purchase used aircraft, aircraft engines, and aircraft parts and recondition them for re-sale to third parties.

There are five primary pieces of litigation related to either the Term Loan or the JV:

- (1) The "Term Loan Action" – this action was filed by JM Int'l in the United States District Court for the Western District of Missouri ("Missouri District Court") on January 24, 2017 against the Debtor. It resulted in two judgments in favor of JM Int'l: (a) a damages award in the amount of \$6,575,833.37 plus 14% interest² and (b) an attorney's fees and costs award in the amount of \$823,341.04 plus interest accruing at 14% from the date of each invoice. Both sides appealed the attorney's fees and costs award, the appeal is pending before the United States Court of Appeals for the Eighth Circuit, and no party appealed the damage award.
- (2) The "Fraudulent Transfer Action" – this action was filed by JM Int'l before the Missouri District Court against the Debtor and the Ohadi Trust, among others, on February 16, 2018 seeking to collect on the Term Loan Judgment. It resulted in two judgments in favor of JM Int'l: (a) a damages award in the amount of \$6,575,833.37, plus interest of \$2,090,326.37 through May 31, 2019, with interest continuing to accrue at 14% thereafter and (b) an attorney's fees and costs award in the amount of \$6,565,297.19, plus interest at 14% from the date of each invoice. Significantly, the Missouri District Court valued the fraudulently transferred property (cash payments and stock certificates) at \$41,054,949.67 and capped the combined awards, currently in excess of \$20,000,000.00, at such amount. The Debtor, the Ohadi Trust, and certain others have appealed the damages and attorney's fees and costs awards and the

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Jet Midwest Group, LLC

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Ohadi Trust, Mr. Woolley, and/or their affiliates posted a \$20 million supersedeas bond in connection with their appeals. It appears the appeals are almost fully briefed and is awaiting oral argument before the Eighth Circuit.

- (3) The "Side Letter Action" – this action was filed before the Missouri District Court by JM Int'l against the Debtor on July 19, 2017 seeking to collect \$18,500,000.00 based on a breach of the Debtor's guaranty to buy back certain aircraft, propellers, and other aircraft parts that JM Int'l had purchased from the Debtor and which were consigned to JM Inc. for reconditioning and re-sale. There is a motion for summary judgment currently pending.
- (4) The "Arbitration" – this action was commenced before the Hong Kong International Arbitration Centre on April 5, 2017 by Top Jet against the JV, the Debtor, and Skyblueocean Ltd., a British Virgin Islands company ("Skyblue"). The Debtor claims that Skyblue is owned 50% by the Debtor and 50% by principals of the Debtor. Skyblue is the direct owner of the Debtor's 50% interest in the JV (with Top Jet owning the other 50% interest in the JV). It resulted in two judgments in favor of Top Jet: (a) a damages award in the amount of \$87,200,000.00 plus interest of 4.25% on and after June 23, 2020 and (b) an attorney's fees and costs award in the amount of \$2,319,518.73 plus interest of 4.25% on and after December 24, 2020. Both awards have been confirmed by the Missouri District Court and reduced to judgments. Bank garnishments have resulted in collection of \$4,017.42 on account of the two judgments. A motion for the appointment of a receiver for the Debtor was pending at the time the Debtor filed its bankruptcy petition. The action is now stayed. Briefing has been submitted on the question of whether the Debtor can be severed from the action so that Top Jet may proceed against non-bankrupt defendants. On December 1, 2021, Top Jet filed a motion for the appointment of a receiver for Skyblue. Such appointment is intended to resolve the deadlock in Skyblue's ownership (50% by the Debtor and 50% by principals of the Debtor) and result in the consensual sale of Skyblue's 50%

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Jet Midwest Group, LLC

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ownership interest in the JV.

- (5) The "Cayman Proceeding" – this action was commenced before the Grand Court of the Cayman Islands, Financial Services Division in 2020 by Top Jet against the JV, the Debtor, and Skyblue. It resulted in an order confirming the damages award from the Arbitration and a charging order against Skyblue's 50% ownership interest in the JV. Top Jet is currently in the final stages of obtaining an order directing the sale of Skyblue's shares in the JV. The involuntary sale process may be replaced with a voluntary sale process if a receiver is appointed for Skyblue.

The Trustee acting on behalf of the bankruptcy estate of the Debtor has entered into a settlement agreement ("Agreement") with Top Jet and JM Int'l (collectively "Judgment Creditors"). The Trustee moves to have the Court approve the Agreement. Woolley, Ohadi, KMQ Business Jets LLC ("KMWBJ"), Alta Airlines Holding LLC ("Alta"), JM Inc., and Paul and Karen Kraus (collectively "Opposing Parties") filed oppositions to the Agreement.

9019(a):

Federal Rule of Bankruptcy Procedure 9019(a) provides that, "[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement." Rule 9019(a). The bankruptcy court has great latitude in approving compromise agreements." In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988). A compromise agreement allows the trustee and the creditor to avoid the expenses and burdens associated with litigating "sharply contested and dubious" claims. In re California Associated Products Co., 183 F.2d 946, 949-50 (9th Cir. 1950); United States v. Alaska National Bank (In re Walsh Constr., Inc.) 669 F.2d 1325, 1328 (9th Cir. 1982).

It is clear that must be more than a mere good faith negotiation of a settlement by the trustee in order for the bankruptcy court to affirm a compromise agreement. The court must also find that the compromise is fair and equitable. Morris v. Davis (In re Morris), 2016 Bankr. LEXIS 985, *19 (B.A.P 9th Cir. 2016).

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According to the prevailing law of the Ninth Circuit, the party proposing the compromise has the burden of persuading the bankruptcy court that the compromise is fair and equitable. In re A & C Props., 784 F.2d 1377, 1381 (9th Cir. 1986). In determining whether a compromise is fair and equitable, the bankruptcy court must consider:

- (a) The probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

A & C Props., 784 F.2d at 1381.

The basic terms of the Agreement are:

- 1) The Judgment Creditors reduce their liquidated claims against the Estate to a liquidated number that waives additional claims for sanctions, increased legal fees, and any increases in existing judgments. As of the filing of the Case on September 14, 2021, such general unsecured claims total \$94,135,534.59 for Top Jet (the "Allowed Top Jet Claim") and \$45,312,194.99 for JM Int'l (the "Allowed International Claims" and, collectively with the Allowed Top Jet Claim, the "Allowed Claims").
- 2) Any other claims of the Judgment Creditors against the Debtor or the Estate shall be allowed only when liquidated and/or asserted in collaboration with the Trustee as Estate Claims (as defined in the Agreement).
- 3) Pending Eighth Circuit appeals as between the Debtor/Estate and the Judgment Creditors shall be dismissed. Pending appeals as to non-debtors are not impacted.
- 4) Pending litigation between the Debtor/Estate and the Judgment Creditors shall be resolved by cancelling protective orders, entering into joint prosecution agreements, entering into stipulations, agreed orders, or other motions to cease such litigation, and taking such

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other actions as deemed necessary by the Trustee to pursue Estate Claims that do not require further Court approval.

- 5) The Trustee consents to release of approximately \$10 million from Jet Midwest, Inc. ("JM Inc.") trapped by the court in the Consignment Action (as defined in the Agreement) to Top Jet, which amount shall reduce the Allowed Top Jet Claim. In addition, if the appeal in the Fraudulent Transfer Action (as defined in the Agreement) is affirmed and the \$20 million supersedeas bond is released in whole or in part, the bond shall be paid 11% to the Estate (the "Initial Recovery") and 89% to JM Int'l, which amount shall reduce the Allowed International Claims.
- 6) The Trustee will file an application to employ Pillsbury Winthrop Shaw Pittman LLP ("Pillsbury") as special litigation counsel to investigate, prosecute, or defend, as applicable, certain litigation, including, without limitation, the pending appeals involving non-debtors before the Eighth Circuit, objecting to claims filed by the Insiders (as defined in the Agreement), and prosecuting claims, if any, against the Insiders, in each case, as authorized by the Trustee. Other relevant terms of the proposed employment are set forth in the Agreement.
- 7) Any liens or security interests held by the Judgment Creditors against property of the Estate are deemed avoided, recovered, and preserved for the benefit of the Estate.

The Opposing Parties raise several issues regarding the Agreement. The first is that the Trustee did conduct an adequate investigation relating to the cases involving the Judgment Creditors and has not supplied the Court with adequate information in order to approve the Agreement. The Trustee has submitted hundreds of pages of declarations and exhibits supporting this motion. Having independently reviewed these papers it is clear that the Trustee has more than done her homework in investigating the Debtor's estate and these actions. Further, there are several final judgments and lengthy decisions by independent tribunals regarding most of the five cases involving the Judgment Creditors, providing a detailed analysis from

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independent tribunals. This is an extremely large and complex estate, requiring the acquisition of a lot of specialized knowledge. The declarations submitted show the Trustee has adequately investigated the estate enough to enter into this Agreement. There is sufficient information provided by the Trustee for the Court to consider whether this Agreement is fair and equitable.

The next argument advanced by the Objecting Parties is that the Judgment Creditors are not the only creditors in this case, yet the Trustee seeks to treat them as such and villainize the Objecting Creditors. Woolley, Ohadi, KMWBJ, and Alta are secured creditors and essentially, they argue that the Trustee is extremely deferential to the Judgment Creditors. Nothing in the Agreement appears to change the rights of any secured parties. The Judgment Creditors are getting unsecured claims and there is no change of priority. Further, The Agreement only seeks to cancel common interest agreements between the Debtor and the Judgment Creditors. The Trustee is not seeking to cancel rights under all protective orders, common interest agreements and similar agreements, just those between the Debtor and the Judgment Creditors. To the contrary the Agreement appears to be beneficial for the secured creditors because the Judgment Creditors will release any lien or secured interest they may have.

The rest of the concerns relate to the four factors used to consider whether a settlement agreement should be used. Each of these factors will be addressed.

The probability of success in litigation is complicated. The Judgment Creditors have filed five proofs of claims against the bankruptcy estate. With exception of Claim No. 5, the proofs of claim are based on judgments. The Agreement will fix the amount of the Judgement Creditor's claims and cause the dismissal of remaining litigation between the Debtor and the Judgment Creditors. The likelihood that theses judgments get overturned is statistically quite low, especially given the detailed fact finding that occurred. Despite the Objecting Parties suggesting there are grounds for reversal of some of these judgments, the fact that a neutral tribunal has already handed down judgments, some of which are supported by lengthy findings, strongly supports that these judgments will ultimately be upheld, or the judgments will not be substantially reduced. The Agreement also seeks to resolve the disputes of how to divide the \$20 million supersedeas bond and who can prosecute the fraudulent transfer

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claims. These disputes are not so clear. While the Trustee believes that she has the exclusive right to pursue the fraudulent transfer claims, the fact that JM Int'l obtained a prepetition fraudulent transfer judgment might give it superior rights over the Trustee. Who would prevail in this dispute is not so clear, therefore, this factor supports approving the Agreement.

The factor of difficulty of collecting does not appear relevant. The Debtor is in bankruptcy and the Judgment Creditors will be paid in accordance with the Bankruptcy Code. The Agreement resolves issues not relating to collection. Certainly, reducing litigation costs often benefits the estate.

The factor of complexity of the litigation, expenses and inconvenience strongly favors approving the Agreement. This litigation is complex to say the least. This matter has spanned over five cases (so far) involving a complex corporate structure and insiders. There are multiple lengthy decisions and appeals pending. There are many difficult legal issues present. The Debtor's bankruptcy also adds to these complexities especially as to who can pursue a fraudulent transfer action. Further, the expense for the Debtor to continue to litigate matters is not justified. The Objecting Creditors did not present anything, other than their opinion, that suggests there is a likelihood of a successful appeal and the Debtor has not prevailed in any of the five cases so far. If the Debtor continues its appeals and continues defending itself against the Judgment Creditors, then the estate is likely going to increase costs. This factor favors approving the Agreement.

The last factor to consider is the paramount interest of the creditors and a proper deference to their reasonable views. It is important to note that the Objecting Creditors are all insiders of the Debtor or codefendants in some of the five cases that the Debtor was a defendant to. As noted previously, the secured creditors really are not affected by this Agreement at all and yet they filed an opposition, why? The provision for which the Objecting Parties seemed to be most concerned about is the employment of the firm Pillsbury Winthrop as special counsel to pursue the insiders for possible fraudulent transfer claims. This motion is accompanied by an application to employ the firm as special council which is addressed in a separate tentative ruling. Pillsbury Winthrop represents the Judgment Creditors in the five cases against the Debtor and has prevailed over the Debtor and many of the Objecting Creditors. This firm has delivered results that have not been favorable to the Objecting Parties. Considering

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the Objecting Parties are insiders or codefendants with the Debtor and the fact that they are most concerned about the hiring of a particular firm, their interests and concerns are self-serving and do not adequately represent the interest of creditors as a whole. This Agreement really is about setting a dollar amount on the Judgment Creditors claims (which the Debtor who was under the control of the insiders failed to list on its schedules), stopping the Debtor from running up costs by continuing to litigate against the Judgement Creditors, and giving the Debtor the rights to pursue fraudulent transfers (which could negatively affect the Objecting Creditors). Nothing about this Agreement is really that controversial, rather, the Objecting Parties oppositions stem from their own interests and not the interests of the estate. This factor favors approving the agreement.

This agreement is fair and equitable, and all the factors used to consider settlement agreements favor approving this Agreement. The Trustee's motion is GRANTED. The Agreement will be approved.

Party Information

Debtor(s):

Jet Midwest Group, LLC

Represented By
Royce Zur

Trustee(s):

Amy L Goldman (TR)

Represented By
Peter J Mastan
Ashleigh A Danker
Dinsmore & Shohl LLP
Claire K Wu

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1:21-11524 Jet Midwest Group, LLC

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#13.00 Application to Employ Pillsbury Winthrop Shaw
Pittman LLP as Special Litigation Counsel

fr. 1/12/22

Docket 63

Tentative Ruling:

Appearance Required. (on zoom); tentative ruling follows:

On September 14, 2021, Jet Midwest Group, LLC ("Debtor") filed a voluntary petition under Chapter 7 of the Bankruptcy Code. Shortly thereafter, Amy Goldman ("Trustee") was appointed as the Chapter 7 Trustee. Prepetition, the Debtor was in the business of purchasing used aircraft, aircraft engines, and aircraft parts for reconditioning and re-sale.

The Trustee has reached a settlement agreement with Jet Midwest International, Co., Ltd. ("JM Int'l") and Top Jet Enterprises, Ltd. ("Top Jet") (collectively "Judgment Creditors"). Among other things the settlement provides that the Trustee employs Pillsbury Winthrop Shaw Pittman LLP ("Firm") in a limited capacity to (1) defend, prosecute, and otherwise work together in the appeals before the Eighth Circuit Court of Appeals, (2) object to claims filed by litigation targets and/or their insiders, and (3) pursue potential claims the estate has against co-defendants in various cases and/or insiders. The Firm currently represents the Judgment Creditors who are creditors that have filed claims in the five cases currently involving the Debtor.

The Trustee has filed an application to employ the Firm alongside the motion to approve the settlement agreement. Woolley, Ohadi, KMQ Business Jets LLC ("KMWBJ"), Alta Airlines Holding LLC ("Alta"), Jet Midwest, Inc. ("JM Inc."), and Paul and Karen Kraus (collectively "Opposing Parties") filed oppositions to the application to employ the Firm.

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Section 327(c):

A trustee may employ professionals pursuant to 11 U.S.C. § 327 which provides:

(a) Except as otherwise provided in this section, the trustee, with the court's approval, may employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title.

[...]

(c) In a case under chapter 7, 12, or 11 of this title, a person is not disqualified for employment under this section solely because of such person's employment by or representation of a creditor, unless there is objection by another creditor or the United States trustee, in which case the court shall disapprove such employment if there is an actual conflict of interest.

11 U.S.C. § 101(14)(C) states, in relevant part, that a "disinterested person" means a person that: does not have an interest materially adverse to the interest of the estate or of any class of creditors ... by reason of any direct or indirect relationship to, connection with, or interest in, the debtor ... or for any other reason. The term "adverse interest" is not defined in the Bankruptcy Code. The reported cases have defined what it means to hold an adverse interest as follows: (1) to possess or assert any economic interest that would tend to lessen the value of the bankrupt estate or that would create either an actual or potential dispute in which the estate is a rival claimant; or (2) to possess a predisposition under circumstances that render such a bias against the estate. In re Tevis, 347 B.R. 679, 688 (B.A.P. 9th Cir. 2006). To represent an adverse interest means to serve as an attorney for an entity holding such an adverse interest. Id. For the purposes of disinterestedness, a lawyer has an interest materially adverse to the

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interest of the estate if the lawyer either holds or represents such an interest. Id.

"Section 327(c) allows the appointment of counsel to represent the trustee, even where counsel represents a creditor, where the court finds no 'actual conflict of interest.'" Stoumbos v. Kilimnik, 988 F.2d 949, 964 (9th Cir. 1993); *see also In re Diva Jewelry Design, Inc.*, 367 B.R. 463 (S.D.N.Y. 2007) (Under the Bankruptcy Code, a professional "is not disqualified for employment... solely because of such person's employment by or representation of a creditor, unless there is objection by another creditor or the United State trustee, in which case the court shall disapprove such employment if there is an actual conflict of interest.")

The Opposing Parties raise several reasons for denying to the employment application of the Firm. The first argument is that the Trustee failed to disclose pursuant to FRBP 2014 that Top Jet owns 50% of Sino Jet Holding, Ltd. ("Sino Jet"), and Sino Jet is an affiliate of the Debtor and Sino Jet also owns 100% of JM Int'l. This argument is not persuasive. First, the Objecting Parties do not explain how any of these relationships could disqualify the Firm from representing the estate. Based on the Court's review of all the parties' papers and declaration it is unclear how there would be an adverse interest here. Sino Jet does not appear to be a creditor and the settlement agreement will resolve any action between the Debtor, Top Jet and JM Int'l which suggests any adverse interest that Sino Jet held is also resolved. While the Debtor and Top Jet are co-owners of Sino Jet, nothing has been presented that would prevent the Firm from representing the Debtor in the limited capacity that the Trustee intends to use the Firm. Second, the Trustee has made known the complex multi-layering corporate structure in the moving papers and in the supplemental declaration and Trustee's motion to approve the settlement agreement shows the relationship between Top Jet, JM Int'l, and Sino Jet. See Dkt. No. 74 ¶ 4 ("It is an action by JM Int'l and Top Jet (suing derivatively on behalf of the JV (i.e., Sino Jet)..."); Dkt No. 67, Exhibit 2. Could the Trustee have done a better job of explaining this relationship? Sure, but nothing suggests that this relationship is material to this bankruptcy case or that there is an adverse interest arising from this relationship. The Trustee has disclosed sufficient information about the relationship between Top Jet, JM Int'l and Sino Jet.

The Opposing Parties also argue that there are numerous potential or actual conflicts of interest that could arise. First, the court is inclined to approve the

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settlement agreement and that will resolve all conflicts between the Debtor and the Judgment Creditors. If the settlement agreement is approved, the Firm will no longer have any divided loyalties and there will be no conflicts that would prevent it from representing the Debtor in a limited capacity. Second, the Opposing Parties overlook that the employment of the Firm is for a limited purpose. The Firm is limited to (1) defend, prosecute, and otherwise work together in appeals before the Eighth Circuit Court of Appeals, (2) object to claims filed by litigation targets and/or their insiders, and (3) pursue potential claims the estate has against chiefly Ohandi and his insiders and Woolley and his insiders. The Firm is not going to be doing anything else with regards to the administration of the estate and nothing which suggests that there would be any potential or actual conflicts of interest will arise in this limited role.

The Opposing Parties also raise concerns about the estate subsidizing the attorney's fees and costs for the Judgment Creditors. The employment application provides that the Firm must "pursuant to 11 U.S.C. §§ 330 and 331, apply to the Court for allowance of fees and costs, which application will be heard upon notice ..." Further, the application discloses "[a]ll fees and expense reimbursements requested ... on an interim basis, shall remain subject to review and approval by the Court, after notice and hearing." The Court will closely look at any fee application to ensure that the Firm will only be compensated for work that it performed for the benefit of the estate and that they are reasonable. In the event that the Judgment Creditors pay the firm for services that it rendered on behalf of the estate, the employment application allows them to seek to be reimbursed for those payments as administration expenses. While the Opposing Parties assert the Trustee has been highly deferential to the Judgment Creditors, nothing remotely suggests the Trustee can not adequately perform her duties. There is no risk that the bankruptcy estate will subsidize the attorney fees and costs of the Judgment Creditors.

The final group of arguments raised by the Opposing Parties is that the employment of the firm is not in the best interest of the bankruptcy estate. They focus on the high costs the Firm charges and argue that it would be beneficial for the estate if another firm with more reasonable costs were employed. The Firm does have higher rates than what many attorneys charge; however, the Firm has an extensive knowledge about the parties involved and the facts and rulings relating to the previous and ongoing cases. Any benefit of hiring a firm that charges lower rates would likely be

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offset by the fees and costs that would be incurred just getting a new firm up to speed on what occurred between the parties. Further, this is a complicated case with a lot of moving parts. In order to properly prosecute it the Trustee needs a firm that can properly handle these matters. In this type of case, the Trustee needs a firm with enough attorneys to work on this matter. These types of firms are going to have higher rates, again suggesting there will not be much of a benefit to hire a different firm. Finally, the Firm has established they can produce favorable results in these matters. While the fees of the Firm are high, based on what has been submitted. tens of millions of dollars are at stake. The employment of the Firm is in the best interest of the estate.

The Application will be GRANTED.

Party Information

Debtor(s):

Jet Midwest Group, LLC

Represented By
Roye Zur

Trustee(s):

Amy L Goldman (TR)

Represented By
Peter J Mastan
Ashleigh A Danker
Dinsmore & Shohl LLP
Claire K Wu

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1:21-11867 Daniel Herbert Brown

Chapter 7

#14.00 Amended Motion to Transfer Venue Pursuant
to 28 U.S.C. Section 1406

Docket 22

Tentative Ruling:

Service proper. No opposition filed. The Court finds that in the interest of justice and convenience of parties, the case shall be transferred to the US Bankruptcy Court for the Northern District of California pursuant to 28 U.S.C. Section 1412. The Motion is granted.

No Appearance Required. Movant to lodge an order with the Court within 7 days.

Party Information

Debtor(s):

Daniel Herbert Brown

Represented By
Adele M Schneiderei

Trustee(s):

Nancy J Zamora (TR)

Pro Se

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11:00 AM

1:16-11985 Samuel James Esworthy

Chapter 11

#15.00 Post Confirmation status conference

fr. 9/1/16, 2/9/17, 3/22/17, 4/26/17, 7/5/17,
8/16/17; 9/27/17, 11/29/17, 2/14/18, 4/25/18,
6/13/18, 7/18/18, 9/12/18, 6/26/19, 9/18/19,
12/18/19; 2/11/20, 3/4/20; 6/24/20, 12/2/20,
3/31/21; 6/16/21; 10/20/21

Docket 1

Tentative Ruling:

Having reviewed the status report, the Court finds cause to continue the status conference to March 23, 2022 at 11:00am.
No Appearance Required.

Party Information

Debtor(s):

Samuel James Esworthy

Represented By
M. Jonathan Hayes

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1:16-11985 Samuel James Esworthy

Chapter 11

Adv#: 1:21-01007 Esworthy v. The Bank of New York Mellon fka The Bank of New Yo

#16.00 Status Conference Re: Complaint for
Violation of Third Amended Plan of
Reorganization

fr. 4/7/21; 6/16/21; 10/20/21

Docket 1

Tentative Ruling:

This matter was continued from October 6, 2021. Parties indicated that they were settling the matter and wanted a continuance to file a request to dismiss. Nothing has been filed since the last hearing. What is the status of this case?

Appearance Required.

Party Information

Debtor(s):

Samuel James Esworthy

Represented By
M. Jonathan Hayes

Defendant(s):

The Bank of New York Mellon fka
BAYVIEW LOAN SERVICING,

Pro Se
Pro Se

Plaintiff(s):

Samuel James Esworthy

Represented By
M. Jonathan Hayes

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1:19-11692 Robert Aleksanyan

Chapter 7

Adv#: 1:21-01072 Bacquet et al v. Aleksanyan

#17.00 Status Conference Re: Complaint to
Determine the Dischargeability of Debt
Pursuant to 11 U.S.C. Sec. 523(a)(3)

Docket 1

***** VACATED *** REASON: Continued to 4/20 at 11 am**

Tentative Ruling:

Vacated. Continued to 4/20/22 at 11:00am. No Appearance Required.

Party Information

Debtor(s):

Robert Aleksanyan

Represented By
Richard A Avetisyan

Defendant(s):

Robert Aleksanyan

Pro Se

Plaintiff(s):

Charles Bacquet

Represented By
Vernon A Nelson Jr

Victoria Bacquet

Represented By
Vernon A Nelson Jr

Trustee(s):

Amy L Goldman (TR)

Pro Se

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1:19-13040 RM Building Maintenance, Inc.

Chapter 7

Adv#: 1:21-01073 Weil et al v. CREDITORS ADJUSTMENT BUREAU INC

#18.00 Status Conference Re: Complaint
(1) To Avoid Preferential Transfer Under
11 U.S.C. Sec. 547(b);

(2) To Recover Preferential Transfer
Pursuant to 11 U.S.C. Section 550(a)

Docket 1

Tentative Ruling:

This is a preferential transfer action pursuant to 11 USC Sections 547(b) and 550(a). Defendant has filed an answer. No status report has been filed.

Appearance Required.

Party Information

Debtor(s):

RM Building Maintenance, Inc.

Represented By
Steven A Alpert

Defendant(s):

CREDITORS ADJUSTMENT

Pro Se

Plaintiff(s):

Diane C Weil

Pro Se

RM Building Maintenance, Inc.

Pro Se

Trustee(s):

Diane C Weil (TR)

Pro Se

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1:20-10069 Shawn Sharon Melamed

Chapter 7

Adv#: 1:20-01046 Mazakoda, Inc. v. Melamed et al

#19.00 Pre-trial conference re: complaint objecting to discharge pursuant to 11 U.S.C. sec 727(3)(3), 727(a)(4)(A); 727(a)(4)(D). and 727(a)(5)

fr. 6/17/20; 7/8/20; 7/15/20, 8/19/20; 4/14/21; 7/28/21, 9/8/21; 9/29/21; 10/20/21, 1/19/22

Docket 1

Tentative Ruling:

Appearance Required.

Party Information

Debtor(s):

Shawn Sharon Melamed

Represented By
Giovanni Orantes

Defendant(s):

Shawn Sharon Melamed

Pro Se

Jenous Tootian

Pro Se

Joint Debtor(s):

Jenous Tootian

Represented By
Giovanni Orantes

Plaintiff(s):

Mazakoda, Inc.

Represented By
Scott E Gizer

Trustee(s):

Amy L Goldman (TR)

Represented By
Scott E Gizer